

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs May 27, 2009

**IN THE MATTER OF W.A.T.R.**

**Appeal from the Circuit Court for Montgomery County**  
**No. 50500258     Ross H. Hicks, Judge**

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**No. M2008-01901-COA-R3-PT - Filed June 8, 2009**

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The mother of the parties' only child filed this action to terminate the father's parental rights so that her husband could adopt the child. The trial court granted the petition, terminating Father's parental rights on the ground that Father's criminal behavior and multiple incarcerations demonstrated a wanton disregard for the welfare of his child, and that termination of Father's parental rights was in the child's best interest. On appeal, Father argues there was not clear and convincing evidence to support the trial court's ruling. We find that there was clear and convincing evidence to terminate Father's parental rights on the ground of abandonment by wanton conduct pursuant to Tenn. Code Ann. § 36-1-102(A)(iv), and that termination was in the best interest of the child.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which ANDY D. BENNETT and RICHARD H. DINKINS, J.J., joined.

John B. Holt, Springfield, Tennessee, for the appellant, Father.

D. Scott Parsley, Nashville, Tennessee, for the appellee, Mother.

Jennifer L. Evans, Springfield, Tennessee, Guardian ad Litem for the child.

**OPINION**

The mother and father of the child divorced in November 2000, two and on-half years after the birth of their child on April 1, 1998. The divorce decree named Mother as the primary residential parent and granted Father visitation on the weekends.

Throughout the child's life, Father has struggled with alcohol and drug abuse, and has continuously engaged in criminal activity. Father first entered a rehabilitation facility March 27, 1998, a month prior to his son's birth. Since then, Father has continued to struggle with substance abuse, mostly marijuana and alcohol, though he admitted to using cocaine on occasion.

Following their divorce, Father sporadically exercised his visitation rights and failed to consistently pay child support. Mother remarried following the parties' divorce, and her new husband assisted in supporting the child and developed a strong bond with the child.

On March 23, 2005, Mother filed a petition to terminate Father's parental rights. The petition was amended twice, with the Second Amended Petition filed June 18, 2007, in which Mother alleged several grounds for termination of Father's rights.

A trial was held on December 6, 2007. The evidence at trial showed that Father had last visited with the child in February 2005, thirty-three months prior to the trial. The evidence also showed that Father's last child support payment was May 6, 2005, thirty months prior to the trial. Although Father had made "some payments" prior to this date, the proof showed that Father had failed to maintain child support payments in compliance with his obligations and that Mother had filed numerous contempt petitions attempting to collect child support from Father. Father also admitted that he had placed more focus on drugs and alcohol than on his own child over the past years.

At the close of the proof, Father moved to dismiss the petition. The trial court dismissed two of the three grounds upon which termination was based, abandonment for willful failure to visit and abandonment for willful failure to support; however, the trial court found that Mother had proven by clear and convincing evidence that Father had demonstrated a wanton disregard for the child's welfare by being incarcerated; therefore, the ground of abandonment in Tenn. Code Ann. § 36-1-102(A)(iv) had been established. The trial court also found that termination of Father's parental rights was in the child's best interest. This appeal followed.

### **Analysis**

A parent's parental rights may be terminated only where a statutorily defined ground exists. Tenn. Code Ann. § 36-1-113(c)(1); *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re M.W.A.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). The petitioner has the burden of proving that there exists a statutory ground for termination. Tenn. Code Ann. § 36-1-113(c)(1); *Jones*, 92 S.W.3d at 838. Only one ground need be proved, so long as that ground is proved by clear and convincing evidence. *See In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003). Whether a statutory ground has been proved by the requisite standard of evidence is a question of law to be reviewed de novo with no presumption of correctness. *In re B.T.*, No. M2007-01607-COA-R3-PT, 2008 WL 276012, at \*2 (Tenn. Ct. App. Jan. 31, 2008) (no Tenn. R. App. P. 11 application filed) (citing *In re Adoption of A.M.H.*, 215 S.W.3d 793, 810 (Tenn. 2007)).

On appeal, Father argues that the trial court erred in finding that the statutory ground set forth in Tenn. Code Ann. § 36-1-102(A)(iv) had been proven by clear and convincing evidence. Tenn. Code Ann. 36-1-102(A)(iv) states that:

For purposes of terminating the parental or guardian rights of parent(s) or guardian(s) of a child to that child in order to make that child available for adoption, “abandonment” means that:

. . . .

(iv) A parent or guardian is incarcerated at the time of the institution of an action or proceeding to declare a child to be an abandoned child, or the parent or guardian has been incarcerated during all or part of the four (4) months immediately preceding the institution of such action or proceeding, and either has willfully failed to visit or has willfully failed to support or has willfully failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding such parent’s or guardian’s incarceration, or the parent or guardian has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child; or . . . .

The proof at trial demonstrated that at the time of the filing of the Second Amended Petition, which alleged the above ground, Father was incarcerated on charges of theft and facilitation of kidnapping. Since the child’s birth, Father had been convicted of numerous criminal offenses, which resulted in his consistent incarceration. Father testified at trial that since the parties’ divorce, the longest period he had gone without being incarcerated was eight months, and that since 2000, he estimated that he had been out of prison for only a total of three years. Father’s charges over the years included simple possession, forgery, escape, contributing to the delinquency of a minor, and driving under the influence.

Father consistently engaged in behavior that resulted in his continuous incarceration and inability to provide or visit with his child. Father admitted that he had prioritized his need for drugs and alcohol over his child. This court has consistently held that a parent’s drug habit and resulting criminal behavior constitutes conduct exhibiting a wanton disregard for one’s child. *See In re C.W.W.*, 37 S.W.3d 467, 475 (Tenn. Ct. App. 2000); *Department of Children’s Services v. Wiley*, No. 03 A01-9903-JV-00091, 1999 WL 1068726, at \*7 (Tenn. Ct. App. Nov. 24, 1999); *Department of Children’s Services v. Osborne*, No. 01 A01-9810-JV-00564, 1999 WL 557543, at \*6 (Tenn. Ct. App. Aug. 2, 1999); *In re Shipley*, No. 03 A01-9611-JV-00369, 1997 WL 596281, at \*5 (Tenn. Ct. App. Sept. 29, 1997).

We, therefore, affirm the trial court's finding that Mother established by the requisite proof the ground in Tenn. Code Ann. 36-1-102(A)(iv) in that Father was incarcerated at the time the Second Amended Petition was filed and Father's behavior constituted a wanton disregard for his child's welfare.

In addition to proving one of the grounds for termination, it must be proven that termination of parental rights is in the child's best interest. Tenn. Code Ann. § 36-1-113(c)(2); *In re F.R.R.*, 193 S.W.3d 528, 530 (Tenn. 2006); *In re A.W.*, 114 S.W.3d 541, 544 (Tenn. Ct. App. 2003); *In re C.W.W.*, 37 S.W.3d 467, 475-76 (Tenn. Ct. App. 2000). The trial court found that termination of Father's parental rights was in the child's best interest based upon the Father's failure to visit or provide support for his child. The proof clearly and convincingly showed that Father had failed to maintain regular visitation with the child or provide support in conformity with his child support obligation. *See* Tenn. Code Ann. § 36-1-113(i)(3), (9). Additionally, the proof clearly and convincingly showed that Father had continuously engaged in criminal behavior resulting in his constant incarceration and struggled with alcohol and drug abuse. *See* Tenn. Code Ann. § 36-1-113(i)(7). Based on the record, we find clear and convincing evidence that termination of Father's parental rights was in the child's best interest.

### **In Conclusion**

The judgment of the trial court is affirmed in all respects, and this matter is remanded with costs of appeal assessed against the Appellant, Father.

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FRANK G. CLEMENT, JR., JUDGE